

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

C.J. STEWART, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 07-4080-CV-C-NKL
)	
MISSOURI DEPARTMENT)	
OF CORRECTIONS, et al.,)	
)	
Defendants.)	

ORDER

On June 20, 2007, United States Magistrate Judge William A. Knox recommended that plaintiffs' request for certification of a class action be denied. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiffs on July 5, July 10 and September 4, 2007. The issues raised in plaintiffs' exceptions were adequately addressed in the report and recommendation. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

On June 20, 2007, plaintiffs Chris Swearingin, Michael Vincent, Anthony Lyles, Don Stathem, Lonnie Evans, Eric Carvin, Aubrey Morgan, Hassan Khaalid, Ike Crawford, Damon Caine, Anthony Cooper, Reginald Griffin, Keith Roy, Booker Boyd, Demetrius Herndon, Jimmy Holly, Michael White and Reggie Griffen were ordered to show cause why their claims should not be dismissed for their failure to prosecute. Plaintiffs were warned that if they did not comply with the order, their claims may be dismissed, under the provisions of Fed. R. Civ. P. 41(b). As stated in M.S. v. Wermers, 557 F.2d 170, 175 (8th Cir. 1977):

A district court has power to dismiss an action for failure of the plaintiff to comply with 'any order of court.' Fed. R. Civ. P. 41(b). Such action may be taken on the court's own motion, Welsh v. Automatic Poultry Feeder Co., 439 F.2d 95, 96 (8th Cir. 1971); see Stanley v. Continental Oil Co., 536 F.2d 914, 916-17 (10th Cir. 1976), and may be exercised under the court's inherent power to control its docket, Pond v. Braniff Airways, Inc., 453 F.2d 347, 349 (5th Cir. 1972); see also Link v. Wabash R.R. Co., 370 U.S. 626, 629-33 (1962), and to protect the

integrity of its orders, Fendler v. Westgate-California Corp., 527 F.2d 1168, 1170 (9th Cir. 1975). See generally 15 A.L.R. Fed. 407 (1973).

Plaintiffs Caine and Cooper did not respond to the order; therefore, their claims are dismissed.

Plaintiffs are notified that if they decide to file an appeal to the United States Court of Appeals for the Eighth Circuit, they will be required to pay the full \$455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). In Henderson, the Eighth Circuit stated that by filing a notice of appeal, the prisoner/appellant consents to the deduction of the initial partial appellate filing fee and the remaining installments from the prisoner's account by prison officials.

THEREFORE, IT IS ORDERED that the claims of plaintiffs Damon Caine and Anthony Cooper are dismissed, pursuant to the provisions of Fed. R. Civ. P. 41(b). It is further

ORDERED that the Report and Recommendation of June 20, 2007, is adopted and plaintiffs' request for certification of a class action is denied. [28] It is further

ORDERED that the motions of plaintiffs Russell Rhone, Booker Boyd, Keith Roy, Norman Brown, Michael Vincent, John Selvy, Wykine Young, Lonnie Evans, Eric Carvin, Don Stathem, Anthony Lyles, Aubrey Morgan, Chris Swearingin, Demetrius Herndon, Reginald Griffen, Michael White, Jimmy Holly, Hassan Khaalid, Ike Crawford, Reggie Griffin and Darrell Miller to dismiss their claims voluntarily are granted and their claims are dismissed, without prejudice, pursuant to the provisions of Fed. R. Civ. P. 41(a). [38, 39, 40, 41, 42, 44, 45]



NANETTE K. LAUGHREY
United States District Judge

Dated: 9-17-07
Jefferson City, Missouri